

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DISTRICT**

VARILEASE FINANCE, INC.,  
and VFI KR SPE I LLC,

Case No. 22-cv-12875

Plaintiffs,

Hon. Bernard A. Friedman

v.

INTERCONTINENTAL  
CAPITAL GROUP, INC., and  
DUSTIN A. DIMISA,

Defendants.

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**DEFENDANTS' ANSWER TO COMPLAINT AND AFFIRMATIVE  
DEFENSES**

Defendants Intercontinental Capital Group, Inc. and Dustin A. DiMisa (“Defendants”), by their undersigned counsel, state as follows for their Answer and Affirmative Defenses to Plaintiffs’ Complaint (the “Complaint”):

**ANSWER**

1. Defendants admit the allegations of Paragraph 1 of the Complaint.

2. Defendants admit the allegations of Paragraph 2 of the Complaint.
3. Defendants admit the allegations of Paragraph 3 of the Complaint.
4. Defendants admit the allegations of Paragraph 4 of the Complaint.
5. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 5 of the Complaint.
6. Defendants admit the allegations of Paragraph 6 of the Complaint.
7. Defendants admit the allegations of Paragraph 7 of the Complaint.
8. Defendants admit the allegations of Paragraph 8 of the Complaint.
9. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 9 of the Complaint.
10. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 10 of the Complaint.
11. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 11 of the Complaint.
12. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 12 of the Complaint.
13. Defendants admit the allegations of Paragraph 13 of the Complaint.

14. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 14 of the Complaint.

15. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 15 of the Complaint.

16. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 16 of the Complaint.

17. Defendants deny the allegations of Paragraph 17 of the Complaint as untrue. In addition, Defendants affirmatively state that Plaintiffs agreed not to take, and/or to remove, an all asset lien on ICG's assets, and that Defendants relied on Plaintiffs' representation.

18. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 18 of the Complaint. In addition, Defendants affirmatively state that to the extent Plaintiffs maintain a UCC-1 on file covering all of ICG's assets, Plaintiffs do so without legal basis.

19. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 19 of the Complaint.

20. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 20 of the Complaint.

21. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 21 of the Complaint.

22. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 22 of the Complaint.

23. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 23 of the Complaint.

24. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 24 of the Complaint.

25. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 25 of the Complaint.

26. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 26 of the Complaint. In addition, Defendants state that Plaintiffs have failed to attach a copy of the referenced agreement to the Complaint.

27. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 27 of the Complaint.

28. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 28 of the Complaint.

29. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 29 of the Complaint.

30. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 30 of the Complaint.

31. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 31 of the Complaint.

32. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 32 of the Complaint.

33. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 33 of the Complaint.

34. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 34 of the Complaint.

### **COUNT I**

35. Defendants incorporate the answers set forth in the foregoing paragraphs as if fully stated herein.

36. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 36 of the Complaint.

37. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 37 of the Complaint.

38. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 38 of the Complaint.

39. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 39 of the Complaint.

40. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 40 of the Complaint.

41. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 41 of the Complaint.

## **COUNT II**

42. Defendants incorporate the answers set forth in the foregoing paragraphs as if fully stated herein.

43. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 43 of the Complaint.

44. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 44 of the Complaint.

45. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 45 of the Complaint.

46. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 46 of the Complaint.

47. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 47 of the Complaint.

### **COUNT III**

48. Defendants incorporate the answers set forth in the foregoing paragraphs as if fully stated herein.

49. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 49 of the Complaint.

50. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 50 of the Complaint.

51. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 51 of the Complaint.

52. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 52 of the Complaint.

53. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 53 of the Complaint. In addition, Defendants affirmatively state that ICG is in the process of marshaling the equipment on Schedule 3 and delivering it to Plaintiffs, rendering Count III moot.

#### **COUNT IV**

54. Defendants incorporate the answers set forth in the foregoing paragraphs as if fully stated herein.

55. Defendants deny the allegations of Paragraph 55 of the Complaint as untrue.

56. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 56 of the Complaint.

57. Defendants deny the allegations of Paragraph 57 of the Complaint as untrue. In addition, Defendants affirmatively state that ICG is in the process of marshaling the equipment on Schedule 3 and delivering it to Plaintiffs, rendering Count IV moot.

#### **COUNT V**

58. Defendants incorporate the answers set forth in the foregoing paragraphs as if fully stated herein.

59. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 59 of the Complaint.

60. Defendants deny the allegations of Paragraph 60 of the Complaint as untrue.

61. Defendants deny the allegations of Paragraph 61 of the Complaint as untrue.

62. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 62 of the Complaint.

63. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 63 of the Complaint. In addition, Defendants affirmatively state that ICG is in the process of marshaling the equipment on Schedule 3 and delivering it to Plaintiffs.

64. Defendants deny the allegations of Paragraph 64 of the Complaint as untrue.

65. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 65 of the Complaint.

66. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 66 of the Complaint.

67. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 67 of the Complaint.

68. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 68 of the Complaint.

69. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 69 of the Complaint.

70. Defendants deny the allegations of Paragraph 70 of the Complaint as untrue.

71. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 71 of the Complaint.

72. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 72 of the Complaint. In addition, Defendants affirmatively state that ICG is in the process of marshaling the equipment on Schedule 3 and delivering it to Plaintiffs, rendering Count IV moot.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Defendants respectfully request that the Court dismiss Plaintiffs' Complaint.

Respectfully submitted,

Dated: January 14, 2023

/s/ Doron Yitzchaki  
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### **AFFIRMATIVE DEFENSES**

Defendants, by their undersigned counsel, state the following affirmative defenses to the Complaint:

1. Plaintiffs' Master Lease Agreement and/or overall sale-leaseback scheme may violate one or more applicable usury laws.
2. Plaintiffs do not have, or have released, the alleged all asset lien.
3. Plaintiffs are estopped from asserting the alleged all asset lien.
4. To the extent Plaintiffs are attempting to enforce an alleged all asset lien, Plaintiffs have not joined all necessary parties.
5. Defendants obligations in regards to Schedules 1 and 2 have been satisfied in full and/or released, as previously admitted by Plaintiffs.
6. Defendants are entitled to setoff or credit for the value of property returned to Plaintiffs and/or collected by Plaintiffs.
7. Plaintiffs may have failed to reasonably mitigate their damages.
8. Defendants reserve the right to supplement these affirmative defenses, and/or add additional affirmative defenses, based upon facts that may become known through the course of discovery.

**WHEREFORE**, Defendants respectfully request that the Court dismiss Plaintiffs' Complaint.

Respectfully submitted,

Dated: January 14, 2023

/s/ Doron Yitzchaki  
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**CERTIFICATE OF SERVICE**

I hereby certify that on January 14, 2023, I electronically filed the foregoing documents with the Court's electronic filing system, which will send notification of such filing to counsel of record.

/s/ Doron Yitzchaki  
Doron Yitzchaki (P72044)

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